

Application No.: 10/539,641  
Amdt dated: December 19, 2008  
Reply to Office Action of: September 22, 2008

### **REMARKS/ARGUMENTS**

This amendment is filed in response to the Office Action that was mailed on September 22, 2008. Claims 1-6 and 8-35 were considered by the Examiner. In this paper, Claims 1, 3, and 26 have been amended, no claims have been added, and no claims have been canceled. Accordingly, Claims 1-6 and 8-35 remain before the Examiner for consideration. No new matter has been added in these amendments.

#### **Summary of the Office Action**

In the Office Action, Claims 1-6 and 8-35 were rejected under 35 U.S.C. § 112. Claims 1-4, 6, 8-11, 26-29, and 35 were rejected under 35 U.S.C. § 102(b) as being anticipated by Sienkiewicz (U.S. Patent No. 5,656,012). Claims 1-6, 8-9, 11, and 35 were rejected under 35 U.S.C. § 102(b) as being anticipated by Boschetti (U.S. Patent No. 4,497,317). Claims 1-6, 8, 19-20, and 26-29 were rejected under 35 U.S.C. § 102(b) as being anticipated by Kindberg et al. (U.S. Patent No. 5,143,082). Claims 1, 3-6, 8-13, 26-27, and 29-31 were rejected under 35 U.S.C. § 102(e) as being anticipated by Rambo (U.S. Patent No. 6,450,983). Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Sienkiewicz in view of Bonutti (U.S. Patent No. 5,163,949). Claims 2, 28, and 35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Rambo in view of Berman (U.S. Patent No. 5,899,942). Claims 14-25 and 32-34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over

Application No.: 10/539,641  
Amdt dated: December 19, 2008  
Reply to Office Action of: September 22, 2008

Rambo in view of Balsells (U.S. Patent No. 5,161,806). For at least the reasons discussed below, Applicant respectfully traverses these rejections.

### **Regarding the Rejections under 35 U.S.C. § 112**

As noted above, Claims 1-6 and 8-35 were rejected under 35 USC §112. More specifically, in Claims 1 and 26, the Office Action indicated that the limitation "one of coplanar with and parallel to" renders the claim vague and indefinite. While Applicant believes that alternative limitations of the type recited in Claims 1 and 26 are permitted (see, e.g., M.P.E.P. 2173.05(h)), Applicant has amended Claims 1 and 26 as suggested by the Examiner regarding certain of the prior art references, thus removing the recitation "one of coplanar with and parallel to" from Claims 1 and 26. Accordingly, Applicant respectfully submits that the rejections under 35 U.S.C. § 112 are no longer applicable. Applicant therefore respectfully requests that these rejections be withdrawn.

### **Regarding the Rejections in View of Boschetti, Kindberg, and Rambo.**

As noted above, Claims 1-6, 8-9, 11, and 35 were rejected as being anticipated by Boschetti, Claims 1-6, 8, 19-20, and 26-29 were rejected as being anticipated by Kindberg, and Claims 1, 3-6, 8-13, 26-27, and 29-31 were rejected as being anticipated by Rambo. Further, Claims 2, 28, and 35 were rejected as being unpatentable over Rambo in view of Berman, and Claims 14-25 and 32-34 were rejected as being unpatentable over Rambo in view of Balsells. Applicant has amended Claims 1 and 26

Application No.: 10/539,641  
Amdt dated: December 19, 2008  
Reply to Office Action of: September 22, 2008

herein to include the language suggested by the Examiner in the "Response to Arguments" section of the Office Action to overcome the separate rejections over Boschetti, Kindberg, and Rambo. Furthermore, neither Berman nor Balsells discloses the deficiencies of Rambo with respect to Claims 1 or 26 as amended.

Accordingly, Applicant submits that the rejections of Claim 1 and 26 are distinguishable over the applied Boschetti, Kindberg, and Rambo references. Claims 2-6 and 8-25 depend from Claim 1 and recite additional novel and nonobvious limitations thereon. Claims 27-35 depend from Claim 26 and recite additional novel and nonobvious limitations thereon. Accordingly, Claims 2-6, 8-25, and 27-35 are likewise distinguishable over the applied Boschetti, Kindberg, and Rambo references and the applied combinations of Rambo with other references for at least the reasons that their respective base claims are distinguishable.

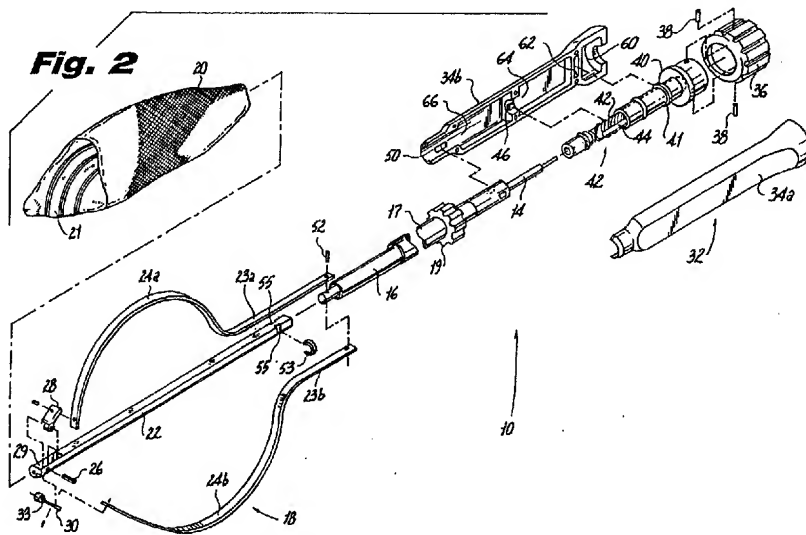
#### **Regarding the Rejections in View of Sienkiewicz**

As noted above, Claims 1-4, 6, 8-11, 26-29, and 35 were rejected as being anticipated by Sienkiewicz, and Claim 5 was rejected as being unpatentable over Sienkiewicz in view of Bonutti. Sienkiewicz relates to a surgical retractor having a handle, and elongate body portion extending distally from the handle, a pair of resilient bands, and an actuation mechanism for moving the bands between open and closed positions. (Sienkiewicz, Abstract). Sienkiewicz further describes that the device includes a retractor assembly 18 with a stabilizing member 22, a pair of resilient bands

24a, 24b, and various hinges and pins 28, 30, 26, 52. (Sienkiewicz, col. 3, lines 46-64).

The resilient bands 24a, 24b are movable between an open configuration in which the shape of each of the bands is an arcuate configuration, and a closed configuration in which each of the bands is substantially straight. (Sienkiewicz, col. 4, lines 2-10).

Figure 2 of Sienkiewicz, reproduced below, illustrates an exploded view of the Sienkiewicz retractor device.



*--Regarding Claim 1*

In contrast to the Sienkiewicz device, Claim 1 of the present application relates to a retraction device comprising, among other limitations, a malleable continuous ring member. The ring member is "adapted to be twisted, folded, bent or deformed with respect to a plurality of bending axes." As discussed in further detail above, Sienkiewicz does not disclose a "continuous ring member" as is recited in Claim 1.

Application No.: 10/539,641  
Amdt dated: December 19, 2008  
Reply to Office Action of: September 22, 2008

Rather, the Sienkiewicz device includes a retractor assembly with various interconnected components. Furthermore, the retractor assembly of the Sienkiewicz device is not "adapted to be twisted, folded, bent or deformed with respect to a plurality of bending axes." Rather, the resilient bands are bent along a single bending axis between a straight configuration and an arcuate configuration.

Accordingly, for at least the reasons discussed above, Claim 1 is distinguishable over Sienkiewicz. Claims 2-4, 6, and 8-11 depend from Claim 1 and recite additional novel and nonobvious limitations thereon. Accordingly, Claims 2-4, 6, and 8-11 are distinguishable over Sienkiewicz for at least the reasons discussed above with respect to Claim 1.

*-- Regarding Claim 5*

As noted above, Claim 5 was rejected as unpatentable over Sienkiewicz in view of Bonutti. Claim 5 depends from Claim 1 and recites additional novel and nonobvious limitations thereon. As discussed above, Sienkiewicz fails to disclose all of the limitations of Claim 1. Bonutti likewise fails to disclose the deficiencies of Sienkiewicz noted above with respect to Claim 1. For example, Bonutti relates to a fluid operated retractor (see Bonutti, abstract, Figure 4, 6), and thus fails to disclose a malleable continuous ring member, as is recited in Claim 1. Thus, the applied combination of Sienkiewicz with Bonutti fails to disclose or suggest all of the recitations of Claim 1, from which Claim 5 depends.

Application No.: 10/539,641  
Amdt dated: December 19, 2008  
Reply to Office Action of: September 22, 2008

*-- Regarding Claim 26*

Claim 26 relates to a method for operating a retraction device comprising, among other limitations, providing a malleable continuous ring member having a plurality of bending portions, the bending portions adapted to be twisted, folded, bent or deformed with respect to a plurality of bending axes. For at least the reasons discussed above with respect to Claim 1, Sienkiewicz fails to disclose all of the recitations of Claim 26. Accordingly, Claim 26 is distinguishable over Sienkiewicz. Claims 27-29 and 35 depend from Claim 26 and recite additional novel and nonobvious limitations thereon. Accordingly, Claims 27-29 and 35 are distinguishable over Sienkiewicz for at least the reasons discussed above with respect to Claim 26.

**Conclusion**

For at least the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, issuance of a Notice of Allowability is most earnestly solicited.

Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Any arguments in support of patentability and based on a portion of a claim should not be taken as founding patentability solely on the portion in question; rather, it is the combination of features or acts recited in a claim which distinguishes it over the

Application No.: 10/539,641  
Amdt dated: December 19, 2008  
Reply to Office Action of: September 22, 2008

prior art.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, John F. Heal, at (949) 713-8283 to resolve such issues promptly.

Sincerely,

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BY: \_\_\_\_\_



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